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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/922,520

08/03/2001

Donald Pham

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EXAMINER

DUONG, DUC T

ART UNIT

PAPER NUMBER

2616

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

03/08/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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<b>Office Action Summary</b>	<b>Application No.</b> 09/922,520	<b>Applicant(s)</b> PHAM ET AL.	
	<b>Examiner</b> Duc T. Duong	<b>Art Unit</b> 2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 December 2006.  
 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,5-7,11-13,17-21 and 25-30 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 1,5-7,11-13,17-21 and 25-30 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 4, 2006 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 7, 13, 19, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bournas (US Patent 6,201,791) in view of Zerlan (US Patent 7,010,295 B1) and Beigi et al (US Patent 6,363 056 B1).

Regarding to claims 1, 7, 13, and 19, Bournas discloses an apparatus for measuring the performance of a scalable network (fig. 1) comprising means 112 for preparing the network for testing (fig. 5 col. 6 lines 3-10); means for establishing an IP routing path 102/106 for a session to be tested (fig. 1 col. 3 lines 38-49); means 114 for sending a constant stream of packets to a client node 108 (fig. 5 col. 6 lines 13-15; noted the N packets are sent in a loop in an immediate succession, and thus the

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packets are sent in constant stream); and means 116 for counting said received packets (fig. 5 and 8 col. 6 lines 15-26); and establishing a peak performance rate (optimal window size) as the highest rate with no packet dropout (fig. 6 col. 7 lines 41-46; noted the optimal window size (rate) is calculated once all ACKs for test packets are received, and thus the optimal window size is calculated with no packet loss).

Bournas fails to teach for the routing path is a static IP route.

However, Zerlan discloses a method and system for testing various elements in a communications network using static IP route (fig. 5 col. 7 lines 24-27).

Thus, it would have been obvious to a person of ordinary skill in the art, at the time of the invention, to arrange for testing of communications network using static IP route as taught by Zerlan in Bournas's system since such static IP route cost less to implement and offers more enhanced security than dynamic route.

Bournas and Zerlan together fail to teach for the counting packet unit is located at the receiving end device.

However, Begei discloses a method and apparatus for monitoring network performance using a packet counter arrange at an egress router 111 (fig. 1 col. 6 lines 4-13).

Thus, it would have been obvious to a person of ordinary skill in the art to employ a packet counter located at the egress router as taught by Begei in Bournas and Zerlan's system for a comparison between the number of packets sent to the number of packets received. The motivation to do so would have been to determine the network characteristic between two end-points.

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Regarding to claim 29, Bournas discloses the packet generator 14 is configured to perform testing using software 116 (fig. 1 col. 3 lines 61-64).

4. Claims 5, 6, 11, 12, 17, 18, 20, 21, and 25-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bournas, Zerlan, and Begei in view of Beverly, IV (U.S. Patent 6,732,182 B1).

Regarding to claims 5, 6, 11, 12, 17, 18, 20, 21, and 25-28, Bournas, Zerlan, and Begei disclose all the limitations with respect to claims 1, 7, 13, and 19 except for the constant stream of packets are sent over an OC-3 or OC-12 level networks. However, Beverly discloses a system for generating a packet loss report, wherein test packets are sends over an OC-3 or OC-12 level (col. 4 lines 21-26) via Ethernet pathways 224-228 (fig. 2 col. 6 lines 16-20). Thus, it would have been obvious to a person of ordinary skill in the art to employ a transmission of test packets over OC-3 and OC-12 network via Ethernet pathways as taught by Beverly in Bournas, Zerlan, and Begei's system for measuring the performance of high speed networks, such as SONET or SDH.

5. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bournas, Zerlan, and Begei in view of Dawson (US Patent 6625,764 B1).

Regarding to claim 30, Bournas, Zerlan, and Begei disclose all the limitations with respect to claim 19, except for a test configuration file is download from a TFTP server. However, Dawson discloses a system under testing using a download CRC calculation from a TFTP server 30 (fig. 1 col. 5 lines 6-17). Thus, it would have been obvious to a person of ordinary skill in the art to employ a CRC calculation value

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download from a server as taught by Dawson in Bournas, Zerlan, and Begei's system ensure the system under test functions properly.

***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Duc T. Duong whose telephone number is 571-272-3122. The examiner can normally be reached on M-F (9:00 AM-6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy D. Vu can be reached on 571-272-3155. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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